REMARKS

The Office Action mailed May 27, 2005 considered and rejected claims 1-20. Claim 20 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtz (U.S. Patent No. 5,574,440, and hereinafter "Kurtz") in view of Macrae et al. (U.S. Patent No. 6,745,391, and hereinafter "Macrae"). Claim 20 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtz, Macrae, and further in view of Pauley et al. (U.S. Patent No. 6,188,448). [1]

The rejections under 35 U.S.C. 112, second paragraph and 35 U.S.C. 103(a) are rendered moot in light of the cancellation of Claim 20 made herein.

The rejections under 35 U.S.C. 103(a) of Claims 1-19 should be withdrawn since Macrae is not prior art with respect to the present patent application. In particular, Macrae does not qualify as 35 U.S.C. 102(b) or 102(a) art because it issued well after the filing date of the present patent application. Furthermore, the Office Action has not established sufficient evidence to justify Macrae as prior art under 35 U.S.C. 102(e) either. In particular, Macrae has a filing date of April 12, 1999, whereas the present patent application (although filed April 21, 2000) has the full benefit of priority as a divisional application to a parent patent application filed February 4, 1999. Although Macrae does claim priority as a continuation-in-part and also from a provisional patent application, the law provides that a 35 U.S.C. 102(e) reference date may only take advantage of such priority dates under some circumstances (see MPEP 2136.03 section III for the circumstances related to priority to a provisional patent application, and section IV for the circumstances related to priority as a continuation-in-part). The Office Action has not provided evidence to show that those limited circumstances apply in the case of Macrae. Accordingly, the undersigned respectfully submits that Macrae is presumptively not prior art.

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[1] Although the prior art status and some of the assertions made with regard to the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status and assertions made with regard to the cited art, as well as any official notice, which was taken in the last response, at any appropriate time in the future, should the need arise, such as, for example in a subsequent amendment or during prosecution of a related application. Accordingly, Applicants' decision not to respond to any particular assertions or rejections in this paper should not be construed as Applicant acquiescing to said assertions or rejections.

Nevertheless, even if Macrae does qualify as prior art under 35 U.S.C. 102(e), the 35 U.S.C. 103(a) rejection of Claim 1-19 should be withdrawn since even the combination of Kurtz and Macrae does not teach or suggest all of the recited features of any of the independent claims.[2] Specifically, the Office Action rightfully acknowledges that Kurtz does not explicitly disclose using the electronic program guide data stored at the central device to determine whether the signal is scrambled or unscrambled, but then asserts that Macrae does teach this feature. The undersigned respectfully disagrees. Macrae, in fact, does not teach or suggest that electronic program guide data is used to determine whether the signal is scrambled or unscrambled. Instead and in stark contrast, in Macrae, the system determines whether the signal is scrambled or unscrambled without using the electronic program guide. The determination results in an alteration to the electronic program guide as appropriate to notify the viewer whether the signal is scrambled or unscrambled.

The reversal of this causation is significant, since it removes any motivation whatsoever to modify Macrae to teach the use of electronic program guide to make the determination of the signal being scrambled or not. This determination is already made independent of the electronic program guide, so there would be no need to use the data from the electronic program guide to make that determination. Furthermore, there is no teaching in Macrae that the use of the electronic program guide data would make the determination any more beneficial. If the rejection is to be continued, the undersigned respectfully requests clarification on where Macrae teaches that the electronic program guide data facilitates the determination on whether or not the signal is scrambled, rather than simply updating the electronic program guide in response to the determination of whether the signal is scrambled or not.

All of the rejected independent claims recite such features, and thus the 35 U.S.C. 103(a) rejection of Claims 1-19 should be withdrawn. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

[2] Since even the combination of reference do not teach or suggest all of the recited features, it is not necessary for a full and complete response to the Office Action to argue against the combination. Accordingly, the lack of such arguments in this response should not be viewed as acquiescing that the combination is appropriate under the law.

Dated this 16th day of August, 2005.

Respectfully submitted,

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